2004

# Buddy Pruitt v. Adoption Center of Choice and John and Jane Doe: Brief of Appellant

Utah Court of Appeals

**IN THE UTAH COURT OF APPEALS**

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BUDDY PRUITT,

PLAINTIFF/ APPELLANT,

V.

Case No. 20040065

ADOPTION CENTER OF
CHOICE,
and
JOHN and JANE DOE (Whose names
are unknown),

DEFENDANTS/ APPELLEES.

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# BRIEF OF APPELLANT

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On appeal from the Fourth District Court
for Utah County, State of Utah
Judge Gary D. Stott

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## JURISDICTION

*The Utah Court of Appeals has jurisdiction to review the final orders and decrees which* are appealed in this action puruant to Utah Code Ann. 78-2a-3(2)(b).

## STATEMENT OF ISSUES

1. Was the operation of 78-30-4.14 (Utah Code) unconstitutional as applied to Mr. Pruitt? Conclusions of law are reviewed for corectness without any special deference. In re Baby *Boy Doe, 717 P.2d 686 (Utah 1986).*

2. Was it impossible for Mr. Pruitt to comply with 78-30-4.14 (Utah Code) prior to the statutory bar, through no fault of his own? Conclusions of law are reviewed for correctness without any special deference. *Ellis v. Social Services Dep't, 615 P.2d 1250 (Utah 1980).*

3. Did the trial court construe the factual allegations in the light most favorable to Mr. Pruitt when it ruled on the Agency's Motion To Dismiss? Conclusions of law are reviewed for correctness without any special deference. *Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99.*

4. Did trial court err in not giving Mr. Pruitt an oppurtunity to ammend his complaint? Conclusions of law are reviewed for correctness without any special deference. *McGuckin v. Smith, 974 F.2d. 1050 at 1055 (9th Cir. 1992).*

5. Did trial court err by not ruling on Mr. Pruitt's Motion for Enlargement of Time and Rule 56 Motion before dismissing Mr. Pruitt's complaint? Conclusions of law are reviewed for correctness without any special deference.

## DETERMINATIVE STATUTES

1. Utah Code Ann, 78-30-4.14 ADDENDUM A

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## STATEMENT OF THE CASE

This case involves the unwarranted termination of Mr. Pruitt's parental rights pursuant to 78-30-4.14 (Utah). Mr. Pruitt filed his verified complaint on May 19, 2003 [R. 62]. The Adoption Center of Choice (the "Agency") filed a Motion to Dismiss on June 9, 2003 [R. 70 ]. In return, Mr. Pruitt filed a Motion of Enlargement of Time and Rule 56 Motion on July 1, 2003 [R. 95]. The trial court did not rule on Mr. Pruitt's 2 Motions and subsequently dismissed mr. Pruitt's complaint on August 28, 2003 [R. 143]. Mr. Pruitt then filed a Rule 59 Motion to ammend the court's judgement , dismissing his complaint, on September 19, 2003 [R. 148]. The trial court denied the Rule 59 Motion on December 17, 2003 [R. 203]. mr. pruitt then filed his Notice of Appeal on January 15, 2004 [R. 216].

## STATEMENT OF THE FACTS

Joshua Tyler Sadler (the "Child") was born on November 12, 2002 in Provo Utah to Lisa Sadler ( "Ms. Sadler"), an unmarried woman. Buddy Pruitt("Mr. Pruitt") is the biological father of the Child.

At all times relevant hereto, Mr. Pruitt and Ms. Sadler were long time residents of the state of Birmingham Alabama. Neither Mr. Pruitt nor Ms. Sadler had ever been residents of Utah, or had any other connection to Utah. Mr. pruitt first met Ms. Sadler in January 2002 at their place

of employment in Birmingham. Shortly after meeting each other, they began dating. That resulted in the conception of the Child on or about Febuary 14, 2002.

On March 22, 2002 Mr. Pruitt was sentenced to a twenty two month sentence for a non-violent first offense of theft of property to be served in an Alabama state prison.

Four days later Mr. Pruitt and Ms. Sadler learned of her pregnancy with Mr. pruitt's son.Mr. Pruitt immediately made known to Ms. Sadler, Leigh Anne Urley (Ms. sadler's 19 year old daughter), and Mr. Pruitt's entire family of his great desire and intentions of raising and supporting his child. Aside from his incarceration, Mr. Pruitt was extremely happy to learn that he was about to have a child. Mr. Pruitt and Ms. Sadler never discussed the potential of having the Child aborted or placed for adoption. Ms. Sadler led Mr. Pruitt and his family to believe that they would **jointly** raise their Child together.

Mr. Pruitt's parental instinct immediately took over. First, Mr. Pruitt made arrangements with his mother (Vicki Richardson) for Ms. Sadler to live with Ms. Richardson for financial and additional emotional support until mr. Pruitt's release. Mr. Pruitt also obtained the needed baby furniture and clothes from his brother and his sister-in-law (George and Angie Pruitt). George and Angie also promised to assist Ms. Sadler and the expected Child in any way they could. Mr. Pruitt assured Ms. Sadler that his family would provide for her and the Child until Mr. Pruitt's release.

For the next few months, Mr. Pruitt and Ms. Sadler stayed in contact through letters and telephone calls. In that time, neither did Ms. Sadler inform Mr. Pruitt or his family of her intentions of placing the Child for adoption, nor leaving the state of Alabama and going to Utah.

But in July 2002 Ms. Sadler vanished and stopped communicating with Mr. Pruitt and his family without any reason or notice whatsoever. Mr. Pruitt and his family attempted to locate Ms. Sadler, mainly through her daughter Ms. Urley, whom Ms. Sadler just previously lived with, but Ms. Urley quit accepting Mr. Pruitt's calls, stopped returning calls to Mr. Pruitt's mother, and soon after changed her phone number to a non listed number. But before changing her number, Ms. Urley gave Mr. Pruitt's mother a false home address to Ms. Sadler's whereabouts. Mr. Pruitt

and his family attempted to locate Ms. Sadler through all reasonable means, but were unsuccessful in doing so.

Then on October 18, 2002 Mr. Pruitt received a letter from the Agency, asking him to relinquish his parental rights and give his consent for the adoption of his Child (Complaint EXHIBIT #1) [ R. 62].

After learning of the intended adoption, Mr. Pruitt **did not** idlely sit back and just do nothing. On the very day that he learned of the adoption he immediately began to protect his parental interest.

First Mr. Pruitt went to the correctional officers for permission to call the Agency so that he may deny his consent for adoption Finally, about after one week later on October 23, 2002 Mr. Pruitt was granted permission to call the Agency.

That is when Mr. Pruitt spoke to Ms. Monson, a social worker at the Agency At that time Mr. Pruitt denied his consent for adoption, asserted his parental rights, made known to the Agency of Mr. Pruitt's family's willingness to care for his Child until his release, and demanded custody of his Child.

Ms. Monson then told Mr. Pruitt that Ms. Sadler did not need his consent to place the Child for adoption. This was just devestating to Mr. Pruitt. Enough so, that he began weeping on the phone before he even ended his call with Ms. Monson.

Ms. Monson told Mr. Pruitt to call an attorney if he had any objections to the adoption, but Ms. Monson never did state that Mr. Pruitt specifically had to comply with Utah statute.

Mr. Pruitt immediately took action. Knowing that him and his family could not afford an attorney to represent him in this matter, Mr. Pruitt began visiting the prison law library every time it was open so that he may protect his parental rights and his Child's right to grow up and love his natural father.

On October 31, 2002 Mr. Pruitt mailed to the Agency and the 4th District Court , Provo, ( "trial court" ) his Answer, Objection, and Denial of Consent [(Complaint EXHIBIT #2) R. 62]

in which Mr Pruitt acknowledged his paternity, denied his consent for adoption, asserted his parental rights, and demanded custody of his son. On or about November 9, 2002 the trial court returned Mr. Pruitt's Answer to him attached with a note from the court clerk stating that there was no case listed under Mr. Pruitt's or Ms. Sadler's names. (Complaint EXHIBIT # 2) R. 62.

On or about November 1, 2002 Mr. Pruitt wrote to his attorney that represeted him on his theft case, asking him for help in this child custody matter. Several days later, this attorney, Everrette Wess, replied by letter [ (Complaint EXHIBIT #11) R. 62] and informed Mr. Pruitt that he did "have the right to be appointed a lawyer in that jurisdiction to protect your rights", and instructed Mr. Pruitt to "contact the judge's office and make your request for legal representation known regarding this situation" (Complaint EXHIBIT #11) [R. 62].

So, Mr. Pruitt immediately did as instructed by Mr. Wess, but Mr. Pruitt received a letter from the trial court stating, "We cannot provide you any legal assistance". (Complaint EXHIBIT #3) R. 62.

On or about November 5, 2002 Mr. Pruitt sent a request to the Dept. of Human Resources office of Madison county Alabama, asking their office to assist Mr. Pruitt in obtaining custody of his Child.

Mr. Pruitt also wrote attorney Mark Robinson, Provo Utah, and asked for assistance in obtaining custody of Mr. Pruitt's son. Mr. Pruitt received a reply letter from Mr. Robinson on November 7, 2002. [ (Complaint EXHIBIT #10) R. 62]. Mr. Robinson told Mr. Pruitt to file a paternity notice with the Dept. of Health. Mr. Robinson never specified in his letter to Mr. Pruitt that he needed to initiate the action **in Utah**, nor did he cite any specific statutes for Mr. Pruitt to comply with. But as stated in the preceding paragraph, Mr. Pruitt had already written to the Dept. of health (Human Resources) in Alabama and asked for assistance in obtaining custody of his Child; so Mr. Pruitt believed he was complying with the law as protecting his parental rights.

On or about November 13, 2002 Mr. Pruitt received a letter from the Madison County DHR, acknowledging receipt of his request for assistance, and then Mr. Pruitt was directed to the

Montgomery Alabama office where the Putative Father Registery is located. (Complaint EXHIBIT #4) R. 62.

Almost one month later, Mr. Pruitt finally received the application from the Ala. DHR to register with the putative Father Registery, in which would, pursuant to Ala. Code 26-10C-1, entitle him to contest the adoption of his son.

On December 12, 2002 Mr. Pruitt registered with the Putative father Registery. [ (Complaint EXHIBIT #5) R. 62.]. Then, Mr. Pruitt began to wait on the formal notice of adoption from the courts, that he believed that he was then entitled to.

In the meantime Mr. Pruitt stayed in the prison law library for hours, almost every day, reading and studying Alabama and federal statutes, case lae, and rules of court, trying to prepare for child custody proceedings.

Also, at the same time, Mr. Pruitt persistantly wrote letters to legal agencies, government offices, legal aid, fathers' rights organizations, and private attorneys, seeking some type of legal guidence or representation so that he may obtain custody of his son. Up until the filing of his verified complaint, Mr. Pruitt wrote over 50 letters [ See list of inquiries made by Mr. Pruitt, Complaint EXHIBIT # 8, R. 62.], but Mr. Pruitt was always denied assistance. See copies of replies, (Complaint EXHIBITS #3, 9-19) R. 62.]

Mr. Pruitt also sought out legal assistance from several prison officials, including 2 counselors, a chaplain, a captain, and even the warden. But none of them could help Mr. Pruitt.

On or about febuary 9, 2003 Mr. Pruitt received notice from the Ala. DHR that he was registered with the Putative father registery. (Complaint EXHIBIT #6) R. 62.

Mr. Pruitt became so diligent in attempting to obtain an attorney to protect his parental rights for his Child, that he contacted a local newspaper and agreed to an article in the newspaper, hoping that an attorney would read about Mr. Pruitt's plight and offer some assistance.

That is when Mr. Pruitt received a letter from Holly Hollman, a reporter at the newspaper, on or about Febuary 10, 2003, and first learned of 78-30-4.14 (Utah Code). [ (Complaint EXHIBIT #20) R. 62.]. But according to that same statute, it was too late for Mr Pruitt to

initiate a paternity proceeding and register with the Dept. of health because his son had already been placed with the adoptive parents.

That's when Mr. Pruitt immediately began to construct his actual verified complaint, to sue the Agency for custody of his son, on the grounds of the unwarranted termination of Mr. Pruitt's parental rights. Mr. Pruitt has dedicated many hours of diligent effort, trying to get in court and fight for custody of his son.

Mr. Pruitt does not deny the fact that he did not comply with 78-30-4.14, but the facts of this case clearly show that it was impossible for Mr. Pruitt to do so in a timely manner, therefore the same statute should be found void and unenforceable as applied to Mr. Pruitt.

## SUMMARY OF ARGUEMENTS

The record clearly shows that Mr. Pruitt **has never** disputed the fact that he didn't comply with 78-30-4.14 (Utah). But when this Court examines Mr. Pruitt's case, it will surely have to conclude that it was impossible for Mr. Pruitt to timely comply with 78-30-4.14 (Utah) due to the dire circumstances surrounding this case.

## ARGUEMENTS

### THE OPERATION OF 78-30-4.14 (Utah) WAS UNCONSTITUTIONAL AS APPLIED TO MR. PRUITT

The Utah Legislature enacted 78-30-4.14 (Utah Code) to promote the state's interest in speedily identifying and placing, if necessary, an unwanted child in an adoptive home. This legislation creates a mechanism for terminating the rights of natural fathers who fail to come foward and assume their duties as natural parents.

This statute was not created to punish unwed fathers nor thwart the attempts of the fathers attempting to raise their own children Unwed natural fathers are not presumed unfit. A natural mother does not have the right to prevent a natural father from raising a child she is abandoning. Courts must "carefully moniter" adoptions of unwed natural parents' children to protect the state's interest in speedily placing the children for adoption, but only if an adoption is necessary. In addition, they must protect unwed natural fathers' constitutional rights from being abused by persons utilizing the statutes to unconstitutionally terminate the right of a father who is ready and willing to assume his parental role.

The Justices have held that there is a strong interest in speedily identifying the fathers of illegitimate children, and to speedily place, if necessary, an unwanted child in an adoptive home. The statute was not created to punish unwed fathers nor allow unwed mothers to thwart the attempts of natural fathers to claim their rights as natural fathers.

The Utah Supreme Court considered the operation of 78-30-4.14 in *Ellis v. Social Services, Utah, 615 P.2d. 1250 (1980),* and said, "a statute fair upon its face may be shown to be void and unenforceable as applied. Id. at 1256.

The same consideration should be given to Mr. Pruitt's case due to the following; a) Ms. Sadler's misrepresentations to Mr. Pruitt [leading Mr. Pruitt to believe that Mr. Pruitt and Ms. Sadler would **jointly** raise their child together], b) Mr. Pruitt learned of Ms. Sadler's intentions and whereabouts only 3 weeks prior to the Child's birth and placement with the Agency, c) Mr. Pruitt's non-residencey in Utah, d) Mr. Pruitt had no access to utah statutes to allow him to effectively file a timely paternity action in the state of Utah, and e) Mr. Pruitt's strict compliance with the adoption laws within his home state of Alabama.

Again, the Utah Supreme Court considered the fairness of the operation of 78-30-4.14 as applied to the father in the case of *In re Adoption of Baby Boy Doe*, 717 P.2d.686 (Utah). The Court said, "Underthe circumstances of this case, however, including 1) the clearly articulated intent of the father to keep and rear the child, 2) the full knowledge of that intent on the part of all involved, 3) the representations made by the mother [to jointly raise and rear the Child

together], 4) the actions of her family {deliberately withheld information about the birth mother's in order to avoid potential "problems" with the father who they knew would obstruct the adoption], 5)the premature birth, 6) the non-residencey of the father coupled with his absence at the time of birth, we can not say that this was either a usual case or that notice may be applied. We therefore conclude that the appellant has successfully shown that "termination of his parental rights are contrary to the basic notions of due process, and that he came fowaed within a reasonable time after the baby's birth, [such that] he should be deemed to have complied with the statute" Id. at 691.

The following circumstances in Mr. Pruitt's case are identical to those of the father in *Baby Boy Doe*;

a) Mr. Pruitt made known from the very beginning of his very great intent and desire to keep and rear his child,and everyone involved had full knowledge of his intent,

b) the representaions made by Ms. Sadler [ to **jointly** raise their child together with Mr. Pruitt),

c) actions of Ms. Sadler's family [mainly Ms. Sadler's 19 year old daghter, Leigh Anne Urley, deliberately withholding information of Ms. Sadler's whereabouts), and

d) the non-residencey of Mr. Pruitt coupled with his absence at the time of birth.

Therefore, according to the Court's decision in *Baby Boy Doe*, the facts of Mr. Pruitt's case successfully show that the termination of his parental rights was contrary to basic notions of due process.

Also, a resident of the state Utah who is informed that the natural mother is intending to place a child for adoption is presumed to know the law and should be expected to take the steps to protect his interest.

But, **a person is not presumed to know the law of a sister state or foreign country**, unless he engages in business, performs work, or owns land", Corpus Juris Secendum, Vol 31A, Section 132(2)d. Mr. Pruitt was an Alabama resident. He and the natural mother were both long time residents of Alabama. Mr. pruitt has stated that he does not know Utah law and that he did

not hear of 78-30-4.14 until Febuary 2003, after his Child had been placed with the adoptive parents.

"The maxim ignorantia legis neminem excusat' is, of course, not founded on the belief that persons do in fact know the law, yet it is recognized that to apply that maxim so as to charge one with knowledge of the laws of any state or country other than that of his residence would, in general, be unreasonable", 73 A.L.R. 1260, Mistake as to law of another state or country as one of law or of fact, at 1261. There is wide support for the proosition that a person is not presumed to know the law of a sister state or country, *In re Daniel's Estate,* 208 Minn. 420, 295 N.W. 465, 1940; *Chirelstein v, Chirelstein,* 12 N.J. Super. 468, 79 A. 2d 884, 1951; *Tavares v. Glenn Falls,* 143 C.A. 2d 755, 300 P. 2d 102, 1956; *U.S. v. Zumstein*, 24 F. Supp. 516, (E.D. Pa. 1938), Pomeroy, Equity Jurisprudence, Vth Edition, Section 854a, et al.

There is no policy reason for expecting a person who has never been in Utah be presumed to know the law. This is an obligation and not a violation under law.

## IT WAS IMPOSSIBLE FOR MR. PRUITT TO FILE THE RQUIRED NOTICE OF PATERNITY IN UTAH PRIOR TO THE STATUTORY BAR, THROUGH NO FAULT OF HIS OWN

When Mr. Pruitt learned of this intended adoption, he immediately attempted to establish paternity by, 1) phoning the Agency to deny his consent for adoption and asserted his parental rights, 2) mailing to the Agency and the trial court his Answer, Objection, and denial of Consent in which Mr. Pruitt asserted his parental rights, accepted responsibility of his parental obligations, and demanding custody of his Child, 3) wrote to the trial court and made known of his need of legal representation, 4) contacted the Alabama DHR for assistance in establishing his paternity and obtaining custody of his son, 5) registering with the Alabama DHR his Notice to Claim Paternity, 6) began a nationwide search for legal representation, and or guidence, and 7) began researching state and federal case law and statutes to get a better understanding of the law, so that he may protect his parental rights. Despite the fact that Mr. Pruitt had no access to Utah statutes, Mr. Pruitt diligently attempted to establish paternity with the limited resources availible to him in the prison law library.

Referring back to *Ellis*, the court stated, "It is conceiveable, however, that a situation may arise when it is impossible for the father to file the required notice of paternity prior to the statutory bar, through no fault of his own In such a case, due process requires that he be permitted to show that he was not afforded a reasonable oppurtunity to comply with the statute " *Ellis v. Social Services*, 615 P 2d at 1256

Mr Pruitt does admit to finally learning that Ms Sadler was living in Utah, but he did not learn of this until **three weeks prior** to his Child's birth and placement with the Agency But the father in *Baby Boy Doe* knew for **three months** that the birth mother and his expected child were living in Utah Id at 686

If the court ruled in *Baby Boy Doe* that three months did not afford the natural father a reasonable oppurtunity to take action, surely it would be logical to assume that three weeks may have not been enough time to afford Mr Pruitt a reasonable oppurtunity to take action, especially considering mr Pruitt's almost identical circumstances to the father's in *Baby BoyDoe*, and Mr Pruitt's unique circumstances due to his incarceration and lack of access to Utah law

The Utah Supreme Court has held that article I of the Utah Constitution guarantees parents a fundamental right to sustain relationships with their children *In re J P, 648 P.2d 1364, 1377 (Utah 1982).* The United States Constitution has been similarilly construed to protect parental rights under the fifth and fourteenth ammendments *Lehr v. Robertson,* 463 U S 248, 103 S Ct 2985, 77 L Ed 2d 614 (1983)

The Utah Supreme Court has examined Utah Code Ann 78-30-4(3), the predecessor to 78-30-4 14 in *Baby Boy Doe* Justice Durham, speaking for the majority through a divided Court, found that although it was not absolutely impossible for the father to have filed an acknowledgement of paternity, the circumstances justified remand for an evidentary hearing Justice Durham noted that the father had lived out of state, the mother and her family knew he would be opposed to the adoption of the child, and information concerning the baby had been deliberately withheld or misrepresented by the mother and the family Justice Durham furthered stated that the standards set out in the case law were "developed in recognition of the need to

balance the competing interest in this type of case; the significant state interest in speedily placing infants for adoption and the constitutionally protected rights of punitive fathers." *Baby Boy Doe* at 691. In *Baby Boy Doe* remand for evidentary hearing was ordered despite the potential voiding of the adoption, moving the child to new parents, and disruption of the bonding process.

Therefore, this Court should conclude from the foregoing that it was impossible for Mr. pruitt to timely comply with 78-30-4.14 and that the termination of mr. pruitt's parental rights is arbitrary and contrary to the basic notions of due process as guaranteed by the Fourth Ammendment of the United States Constitution.

**TRIAL COURT ERRED IN DISMISSING MR. PRUITT'S COMPLAINT**

In deciding a motion to dismiss, the Court must assume that all the facts in the complaint are true and must construe those factual allegations in the light most favorable to the Plaintiff, and should dismiss the complaint only if, "it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson, 355 US 41, 45-46, 78 S.Ct. 99.*

**Also, "...**we must take as true all well pleaded allegations in the Plaintiff's complaint and we must indulge all reasonable inferences in favor to Plaintiff." *Curtis v. Shawnee Cty. Bd. of Cty. COM'RS*, 811 F.2d 1371 (10th Cir. 1987).

The facts stated in Mr. Pruitt's verified complaint [ R. 62.] reveal that Mr. Pruitt ; a) had learned of the intended adoption just 3 weeks befeore his Child's birth and placement with the Agency, b) that mr. pruitt spent many hours in the prison law library attempting to protect his parental rights, c)that mr pruitt sought legal assistance in this matter from officials at the prison where he was housed, but he was always denied the same, and d) wrote over 50 letters searching for legal guidence or representation.

Despite his efforts, Mr. Pruitt still did not learn of 78-30-4.14 until after the time allowed to comply with the same statute. These facts clearly show that mr. pruitt was unaware of his duty to comply with 78-30-4.14, due to no fault of his own.

If the Court must "assume all the facts in the Complaint are true and musy construe those factual allegations in the light most favorable to the Plaintiff", the Court will surely conclude then the fact stated by Mr. Pruitt reveal an unconstitutional termination of his parental rights. Therefore, Mr. Pruitt's complaint should have never been ~~denied~~ dismissed.

Mr. Pruitt clearly shows that he has the substance and merit to his claim, and the Agency's motion to dismiss should be denied.

## TRIAL COURT ERRED IN NOT GIVING MR. PRUITT AN OPPURTUNITY TO AMMEND HIS COMPLAINT

At the least, the Court should have provided Mr. pruitt with notice of deficiencies and an oppurtunity to ammend his complaint, before the trial court dismissed his complaint for failure to state a claim.

As stated in *Broughton v. Cutter Laboratories,* 622 F.2d 458 (9th Cir. 1980), "A pro se litigant must be given leave to ammend his or her complaint unless it is absolutely clear that the deficiencies could not be cured by ammendment". Id. at 460.

"The law is clear that before a district court may dismiss a pro se complaint for failure to state a claim, the court must provide the pro se litigant with notice of deficiencies of his or her complaint and an oppurtunity to ammend the complaint prior to dismissal", *McGuckin v. Smith,* 974 F.2d 1050 at 1055 (9th Cir. 1992).

Unskilled in the law, Mr. Pruitt is far more prone to errors in pleading than the person who benefits from the representation of counsel and "the requirement of the courts to provide a pro se litigant with the notice of deficiencies in his or her complaint helps ensure that the pro se

litigant can use the oppurtunity to ammend effectively." *Noll v. Carlson,* 809 F.2d 1446 (9th Cir. 1987).

## TRIAL COURT ERRED BY NOT RULING ON MR. PRUITT'S MOTIONS

On June 26, 2002, **3 days after the deadline** for Mr. Pruitt to respond to the Agency's motion to dismiss, Mr. Pruitt mailed to the trial court his Motion for Enlargement of Time on the grounds of excuseable neglect, due to the fact that he did not have a complete copy of the utah rules of court, **mainly** Rule 4-501 MOTIONS, and he didn't know of the 10 day deadline to respond to the motion to dismiss. Also at that time, Mr. Pruitt submitted his Rule 56 Motion, asking that the Agency's motion to dismiss be denied, or be granted a continuance so that Mr. pruitt may be allowed to gather affidavits and conduct discovery in order to submit evidence in opposition to the Agency's motion. [R. 95 & 100].

But the trial court never ruled on Mr. Pruitt's motions, and subsequently dismissed Mr. Pruitt's complaint. When Mr. Pruitt raised this issue in his Rule 59 Motion, the trial court held that it was required to review the Agency's motion to dismiss before reviewing Mr. Pruitt's motions. [ page 6 of Rule 59 Ruling, R. 203.]

Mr. Pruitt fully complied with Rule 6(b)(2) by requesting by motion in order to file a late response to the Agency's motion to dismiss.Therefore Mr. Pruitt should have been allowed the oppurtunity to file the late response through the provisions of Rule 6(b)(2).

## CONCLUSION

The manner in which Mr. Pruitt's parental rights were terminated in this action constitute a clear violation of his due process rights. Equity mandates that Mr. Pruitt's parental rights be re-established and the Decree of Adoption of his son's be set aside and reversed.

## ADDENDUM

Following this brief are the following documents:



RESPECTFULLY SUBMITTED this 24 day of July 2004.

Buddy Pruitt


Buddy Pruitt
1337 15th Ave. So. Apt. 203
Birmingham AL 35205

## CERTIFICATE OF SERVICE

*I HEREBY CERTIFY that I have served a true and correct copy of the foregoing*

Appellate Brief upon:

Utah Court of Appeals
Appellate Clerk's Office
450 South State Street
P.O. Box 140230
Salt Lake City, Utah 84114

**AND**

(Attorney for Adoption Center of Choice)

Wood Crapo LLC
Larry S. Jenkins
500 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

by placing the same in the U.S. mail, postage prepaid and properly addressed, on this 24 day of July, ~~day of~~ 2004.

Buddy Pruitt

Buddy Pruitt
1337 15th Ave. So. Apt. 203
Birmingham Alabama 35205

**78-30-4.14. Necessary consent to adoption or relinquishment for adoption.**

A - 1

(1) Either relinquishment for adoption to a licensed child-placing agency or consent to adoption is required from:

(a) the adoptee, if he is more than 12 years of age, unless he does not have the mental capacity to consent;

(b) both parents or the surviving parent of an adoptee who was conceived or born within a marriage, unless the adoptee is 18 years of age or older;

(c) the mother of an adoptee born outside of marriage;

(d) any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent or her relinquishment to an agency for adoption;

(e) any biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78, Chapter 45e, prior to the mother's execution of consent or her relinquishment to an agency for adoption, which voluntary declaration of paternity is considered filed when entered into a database that can be accessed by the Department of Health;

(f) an unmarried, biological father of an adoptee, as defined in Section **78-30-4.11**, only if the requirements and conditions of Subsection (2)(a) or (b) have been proven; and

(g) the licensed child-placing agency to whom an adoptee has been relinquished and that is placing the child for adoption.

(2) In accordance with Subsection (1), the consent of an unmarried, biological father is necessary only if the father has strictly complied with the requirements of this section.

(a) (i) With regard to a child who is placed with adoptive parents more than six months after birth, an unmarried, biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

(A) visiting the child at least monthly when physically and financially able to do so, and when not prevented from doing so by the person or authorized agency having lawful custody of the child; or

(B) regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child, and when not prevented from doing so by the person or authorized agency having lawful custody of the child. (ii) The subjective intent of an unmarried, biological father, whether expressed or otherwise, unsupported by evidence of acts specified in this Subsection (2) shall not preclude a determination that the father failed to meet the requirements of Subsection (2)(a)(i).

(iii) An unmarried, biological father who openly lived with the child for a period of six months within the one-year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and openly held himself out to be the father of the child during that period, shall be considered to have developed a substantial relationship with the child and to have otherwise met the requirements of Subsection (2)(a)(i).

(b) With regard to a child who is under six months of age at the time he is placed with adoptive parents, an unmarried, biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this Subsection (2) prior to the time the mother executes her consent for adoption or relinquishes the child to a licensed child-placing agency. The father shall:

(i) initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act on Paternity, and file with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

A2

(ii) file notice of the commencement of paternity proceedings with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose, which notice is considered filed when the notice is entered in the registry of notices from unmarried biological fathers, and

(iii) if he had actual knowledge of the pregnancy, paid a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child

(3) An unmarried, biological father whose consent is required under Subsection (1) or (2) may nevertheless lose his right to consent if the court determines, in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, that his rights should be terminated, based on the petition of any interested party

(4) If there is no showing that an unmarried, biological father has consented to or waived his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (2)(b)(ii), and that no filing has been found pertaining to the father of the child in question, or if a filing is found, stating the name of the putative father and the time and date of filing That certificate shall be filed with the court prior to entrance of a final decree of adoption

(5) An unmarried, biological father who does not fully and strictly comply with each of the conditions provided in this section, is deemed to have waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required

Amended by Chapter 122, 2004 General Session
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*Last revised Wednesday May 26, 2004*

**Section 26-10C-1**

A3

**Registration of putative fathers; notice of intent to claim paternity; release of information.**

(a) The Department of Human Resources shall establish a putative father registry which shall record the names, Social Security number, date of birth, and addresses of the following:

(1) Any person adjudicated by a court of this state to be the father of a child born out of wedlock.

(2) Any person who has filed with the registry before or after the birth of a child born out of wedlock, a notice of intent to claim paternity of the child, which includes the information required in subsection (c) below.

(3) Any person adjudicated by a court of another state or territory of the United States to be the father of a child born out of wedlock, where a certified copy of the court order has been filed with the registry by the person or any other person.

(4) Any person who has filed with the registry an instrument acknowledging paternity pursuant to Sections 26-11-1 to 26-11-3, inclusive.

(b) The clerk of the court which determines a man to be the father of a child born out of wedlock shall immediately notify the Department of Human Resources of the determination of paternity and include therein the information required under subsection (c) below.

(c) A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall include all of the following:

(1) The father's name, Social Security number, date of birth, and current address.

(2) The mother's name, including all other names known to the putative father that have been used by the mother, Social Security number, date of birth, and address, if known.

(3) The father's current income and financial information by attaching a child support obligation income statement/affidavit form to be prescribed by regulations of the department.

(4) The child's name and place of birth, if known.

(5) The possible date or dates of sexual intercourse.

The person filing shall notify the registry of any change of address pursuant to the procedures prescribed by regulation of the department. The registration must be on a form prescribed by the department and signed by the putative father and notarized.

The putative father may file his notice of intent to claim paternity prior to the birth of the child.

(d) A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed and, upon receipt of the notification by the registry, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

(e) An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any

party, other than the person who filed the notice, in any proceeding in which the fact may be relevant. A4

(f) The Department of Human Resources shall, upon request, provide the names and addresses of persons listed with the registry to any court. The information shall not be divulged to any other person except upon order of a court for good cause shown. The Department of Human Resources shall further after receiving notice pursuant to Section 26-10A-17 of the pendency of any adoption proceeding wherein the proposed adoptee is a child born within 300 days of the date or dates of sexual intercourse listed in the registry and to the same biological mother listed in the registry, immediately send a copy of the notice of intent to claim paternity to the court handling the adoption. When the court handling the adoption receives said notice of the intent to claim paternity, that court shall forthwith give notice of the pendency of the adoption proceeding to the putative father listed in such notice of intent to claim paternity and at the address therein listed, and additionally notify the biological mother that the putative father has registered in conformity with the putative father registry.

(g) The Department of Human Resources shall create a form titled "Notice of Intent to Claim Paternity" to be used when a person files notice of intent to claim paternity, and which shall include the information required under subsection (c), the name of the mother who has given birth or may give birth to a child born out of wedlock, and the possible date or dates of sexual intercourse.

(h) The registry, except as provided by subsection (f), shall be kept confidential and not open for public inspection.

(i) Any person who claims to be the natural father of a child and fails to file his notice of intent to claim paternity pursuant to subsection (a) prior to or within 30 days of the birth of a child born out of wedlock, shall be deemed to have given an irrevocable implied consent in any adoption proceeding.

This subsection shall be the exclusive procedure available for any person who claims to be the natural father of a child born out of wedlock on or after January 1, 1997, to entitle that person to notice of and the opportunity to contest any adoption proceeding filed and pending on or after January 1, 1997.

(j)(1) A person who knowingly or intentionally registers false information under this section commits a Class A misdemeanor.

(2) A person who knowingly or intentionally releases confidential information in violation of this section commits a Class A misdemeanor. However, it is a defense under this subsection if the Department of Human Resources releases confidential information while acting:

a. In good faith.

b. With reasonable diligence.

***(Acts 1996, No. 96-537, p. 751, §1; Act 2002-417, p. 1061, §1.)***

A5

**Rule 6. Time**

(a) Computation In computing any period of time prescribed or allowed by these rules by the local rules of any district court by order of court or by any applicable statute the day of the act, event or default from which the designated period of time begins to run shall not be included The last day of the period so computed shall be included unless it is a Saturday a Sunday or a legal holiday in which event the period runs until the end of the next day that is not a Saturday a Sunday or a legal holiday When the period of time prescribed or allowed without reference to any additional time provided under subsection (e) is less than 11 days intermediate Saturdays Sundays and legal holidays shall be excluded in the computation

(b) Enlargement When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect but it may not extend the time for taking any action under Rules 50(b), 52(b) 59(b) (d) and (e) and 60(b) except to the extent and under the conditions stated in them

(c) Unaffected by expiration of term The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action that has been pending before it

(d) Notice of hearings Notice of a hearing shall be served not later than 5 days before the time specified for the hearing unless a different period is fixed by these rules or by order of the court Such an order may for cause shown be made on ex parte application

(e) Additional time after service by mail Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the end of the prescribed period as calculated under subsection (a) Saturdays Sundays and legal holidays shall be included in the computation of any 3-day period under this subsection except that if the last day of the 3-day period is a Saturday a Sunday or a legal holiday the period shall run until the end of the next day that is not a Saturday Sunday or a legal holiday

**ADVISORY COMMITTEE NOTE**

A6

**IN THE FOURTH JUDICIAL DISTRICT**
**UTAH COUNTY, STATE OF UTAH**

| | |
|---|---|
| Buddy PRUITT,<br><br>Plaintiff,<br><br>v.<br><br>THE ADOPTION CENTER OF CHOICE, and John and Jane Doe (whose names are unknown),<br><br>Defendants. | **RULING ON MOTION TO DISMISS**<br>Filed 8-28-03<br><br>DATE: August 27, 2003<br>CASE NO. 030402464<br>Judge Claudia Laycock<br>Division 5 |

This matter comes before the Court on defendant's *Motion to Dismiss Civil Complaint for Custody of An Infant Child for Failure to State a Claim.* Oral arguments were not requested and plaintiff did not file a responsive memorandum. The Court will now rule on the motion.

**UNDISPUTED FACTS**
**and PROCEDURAL HISTORY**

The Court draws these facts from the defendant's *Memorandum in Support of Motion to Dismiss Civil Complaint for Custody of An Infant Child for Failure to State a Claim* and plaintiff's verified *Civil Complaint for Custody of Infant Child.*

1. Plaintiff claims to be the biological father of a child who was placed for adoption with defendant.

2. Plaintiff and the child's mother, Lisa Sadler ("Sadler"), were both residents of Birmingham, Alabama when the child was conceived in February of 2002.

3. Early in the pregnancy plaintiff was sentenced to a twenty-two month term at a state prison in Harvest, Alabama.

4. Plaintiff claims that he first learned of Sadler's pregnancy on March 26, 2002, after



Attachment A

plaintiff was incarcerated. Plaintiff claims that from the moment of learning about his child he intended to raise and provide for his child and to be a major part of the child's life.

5. Sadler moved to Utah at sometime between March 26, 2002 and October 18, 2002. She contacted defendant and arranged to give the child up for adoption.

6. Plaintiff received a request for consent to adoption from defendant on October 18, 2002. Plaintiff refused to sign the consent form. A social worker for defendant spoke with plaintiff on October 23, 2002 and explained to him that Sadler had moved to Utah and planned to give the child up for adoption.

7. Plaintiff began writing letters to various attorneys and legal aid foundations requesting help in contesting the adoption.

8. On October 31, 2002 plaintiff began writing to the Fourth District Court of Utah attempting to assert his rights as a parent. The Court was unable to process plaintiff's letters and requests because no case yet existed concerning plaintiff or the child's adoption.

9. On November 4, 2002, attorney Mark F. Robinson of Robinson, Seiler & Glazier, LC, located in Provo, Utah, wrote a letter to plaintiff, advising him that Mr. Robinson was unable to assist plaintiff and instructing him to immediately file a paternity action with the Department of Health.

10. The child was born on November 12, 2002.

11. The child was given to defendant for placement for adoption on November 14, 2002. Sadler signed a relinquishment of her rights to the child and consent to adoption on that same day.

12. Defendant obtained a Certificate of Search For Notice of the Initiation of Proceedings to Establish Paternity on November 15, 2002. The Certificate shows that no one had filed an

initiation of paternity proceedings with the State Registrar of Vital Statistics.

13. Plaintiff filed a "Putative Father Intent to Claim Paternity Registration" form with the Alabama Department of Human Resources on December 12, 2002.

14. The Alabama Department of Human Resources acknowledged receipt of plaintiffs registration form and his successful application to the Putative Father Registry on February 7, 2003.

15. Finally, on May 23, 2003 plaintiff filed a verified *Civil Complaint for Custody of Infant Child* asking the Court to dismiss the adoption petition and to hold an evidentiary hearing to determine an appropriate custodian for the child.

16. On June 9, 2003 defendant filed a *Motion to Dismiss Civil Complaint for Custody of an Infant Child for Failure to State a Claim ("Motion to Dismiss").* An accompanying supportive memorandum was filed that same day.

17. Plaintiff did not file a responsive memorandum.

18. The Court received a notice to submit for the *Motion to Dismiss* on June 30, 2003.

**DISCUSSION**

The Utah legislature has clearly established that "an unmarried biological father has the primary responsibility to protect his rights " Utah Code Ann. 78-30-4.12(3)(d) (2003) The process for adoption is very particularly set out in the Code and specific requirements have been established for unmarried biological fathers who want to have legal rights to their children. The legislature very carefully weighed the interests of the persons involved in an adoption – the biological mother, the adoptive parents, the child and the biological father – and the legislature decided that "an unmarried biological father has an inchoate interest that acquires constitutional

protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood." Utah Code Ann. 78-30-4.12(2)(e) (2003). A9

The Court must begin its analysis with the presumption that an unmarried biological father knows that the child may be adopted without his consent unless he strictly complies the requirements for establishing paternity. Utah Code Ann. 78-30-4.12(3)(e) (2003). The rule that the Court must follow is that "the consent of an unmarried biological father [to adoption] is necessary only if the father had strictly complied with the requirements of this section." Utah Code Ann. 78-30-4.14(2) (2003).

Plaintiff learned of Sadler's pregnancy very early on and, to his credit, he was happy for the birth of the child and glad for the opportunity to be a parent. Regardless of whether plaintiff approved of Sadler's decision to move to Utah, the record is very clear that plaintiff was aware that Sadler moved to Utah prior to the birth of the child. As evidence of this fact the Court refers to the *Answer, Objection and Denial of Consent to Adoption of Unborn Child* that plaintiff mailed to the Fourth District Court for the State of Utah on October 31, 2002. This document shows that plaintiff was aware of the adoption and was aware of his responsibility to adhere to proper legal procedures to establish his paternal rights to the child according to Utah law.

Unfortunately, the Court can not find any evidence in the file that plaintiff strictly adhered to Utah's requirements for establishing paternity. Plaintiff was required to do three things to establish paternity: (1) initiate proceedings to establish paternity according to Title 78, Chapter 45e, Uniform Act on Paternity, (2) file a notice of the commencement of paternity proceedings with the state registrar of vital statistics, and (3) pay a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth in accordance with his

means. Utah Code Ann. 78-30-4.14(2)(b) (2003). Further, all of these conditions had to be accomplished prior to the time the mother executed her consent for adoption or relinquished the child to a licenced child-placing agency. Utah Code Ann. 78-30-4.14(2)(b) (2003). A 10

The mother, Sadler, gave the child to defendant on November 14, 2002 and she also executed a consent to adoption on that same day. To strictly comply with the statutes plaintiff must have complied with the three requirements above prior to November 14, 2002.

The Court finds plaintiff did not timely comply with the statutory requirements. Plaintiff did initiate proceedings to establish paternity in May of 2003, but the statute requires that plaintiff have taken this action prior to November 14, 2002. Utah law requires that an unmarried biological father must strictly comply with the legal steps. Utah Code Ann. 78-30-4.12(3)(b) (2003).

The Court also finds no evidence that plaintiff has filed a notice of the commencement of paternity proceedings. Defendant provided evidence that no notice was filed with the Utah State Registrar of Vital Statistics prior to November 14, 2002, and plaintiff has not provided any evidence that would prove otherwise. Plaintiff was aware that he needed to file a paternity action with the Department of Health because he received a letter from a Utah attorney expressly instructing him to do so. Plaintiff did register with the Alabama Putative Father Registry but the Utah statute requires him to file with the Utah State Registrar of Vital Statistics. Filing with the Alabama registry does not satisfy the Utah requirements. Even if the Court were to consider the filing with the Alabama registry, it was not timely done. Plaintiff needed to file on or before November 14, 2002, but plaintiff did not file with the Alabama registry until he was almost a month late on December 12.

Addressing the third requirement, the Court is aware of plaintiff's difficult circumstances. A 11 Plaintiff tried to arrange for care of Sadler and the child even though he was incarcerated and unable to directly provide for Sadler. Plaintiff has also demonstrated to the Court that he is unable to afford an attorney and has participated in this action *pro se*. Considering the means available to plaintiff, he probably fulfilled the third requirement as far as he is able.

However, plaintiff did not strictly comply with all three of the statutory requirements of Utah Code Ann. 78-30-4.14(2)(b) (2003) and, therefore, did not establish his parental rights before the mother relinquished the child to a child-placing agency.

**CONCLUSION**

Defendant's *Motion to Dismiss Civil Complaint for Custody of An Infant Child for Failure to State a Claim* is granted.

The Court orders counsel for defendant to prepare findings of fact, conclusions of law, and an order consistent with this ruling, pursuant to Rule 4-504 of the Utah Rules of Judicial Administration.

DATED this 28th day of August, 2003.

Judge Claudia Laycock
District Court Judge

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**MAILING CERTIFICATE**

I hereby certify that I served the foregoing by mailing a true and exact copy thereof, postage prepaid on the 28 day of August, 2003 to:

Plaintiff Pro Se:
Buddy Pruitt 222271
28779 Nick Davis Road
Limestone Correctional Facility
Harvest, Alabama 35749

Counsel for Defendant:
Larry S. Jenkins
Wood Crapo LLC
500 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

Quickson
Deputy court clerk

A 13

**IN THE FOURTH JUDICIAL DISTRICT COURT**
**UTAH COUNTY, STATE OF UTAH**

| | |
|---|---|
| BUDDY PRUITT,<br><br>Plaintiff,<br><br>v.<br><br>THE ADOPTION CENTER OF CHOICE, INC., a Utah corporation, JOHN AND JANE DOE (whose names are unknown),<br><br>Defendants. | **RULING**<br><br>Case No. 030402464<br><br>Judge Gary D. Stott |

This matter comes before the Court on Plaintiff's Rule 59(e) Motion. The Court has reviewed all relevant memoranda, case law and statutory provisions, and being fully advised in the matter, issues the following ruling.

**RULING**

On August 27, 2003, this Court granted Defendants' Motion to Dismiss Plaintiff's Complaint and the Complaint was dismissed with prejudice. On September 19, 2003, Plaintiff filed his Rule 59(e) Motion to alter, amend, or vacate the Court's August 27, 2003 judgment. Defendants filed their Memorandum in Opposition on or about October 2, 2003.

This Court finds that Plaintiff has not provided a sufficient basis upon which the Court may justify any alteration, amendment or dismissal of the Court's August 27, 2003 judgment. The undisputed facts demonstrate that Mr. Pruitt did not perform the steps required under Utah law to establish rights to the child at issue. Nothing in Mr. Pruitt's Rule 59(e) Motion indicates otherwise.

**I. Although Mr. Pruitt is a non-resident biological father, he failed to fully comply with the requirements of U.C.A. §78-30-4.15(4) and is therefore not entitled to protection under U.C.A. §78-30-4.15(4).**

Section 78-30-4.15(4) of the Utah Code governs the duties of a *non-resident* unmarried biological father when contesting an adoption. This Section sets forth a four-part test and states:

> (4) The Legislature finds that an unmarried biological father who resides in another state may not, in every circumstance, be reasonably presumed to know of, and strictly comply with, the requirements of this chapter. Therefore when all of the following requirements have been met, that unmarried biological father may contest an adoption, prior to finalization of the decree of adoption, and assert his interest in the child; the court may then, in its discretion, proceed with an evidentiary hearing under Subsection 78-30-4.16(2):
>
> (a) the unmarried biological father resides and has resided in another state where the unmarried mother was also located or resided;
>
> (b) the mother left that state without notifying or informing the unmarried biological father that she could be located in the State of Utah;
>
> (c) the unmarried biological father has, through every reasonable means, attempted to locate the mother but does not know or have reason to know that the mother is residing in the State of Utah; and
>
> (d) the unmarried biological father has complied with the most stringent and complete requirements of the state where the mother previously resided or was located, in order to protect and preserve his parental interest and right in the child in cases of adoption.

Utah Code Ann. §78-30-4.15(4).

This Court finds that Mr. Pruitt, as a resident of Alabama, failed to comply with each of these four factors, did not met the requirements of Utah law, and is therefore denied protection under U.C.A. §78-30-4.15(4). Mr. Pruitt failed to comply with two of these factors as follows:

First, the unmarried biological father, Mr. Pruitt, and the child's mother, Lisa Sadler, were both residents of Birmingham, Alabama when the child was conceived in February of 2002.

Second, Ms. Sadler left the State of Alabama and moved to Utah sometime between March 26, 2002 and October 18, 2002. Mr. Pruitt claims his communications with Ms. Sadler ceased in July of 2002.

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Third, Mr. Pruitt admits that he received paperwork from the Adoption Center of Choice on October 18, 2002. On October 23, 2002, Mr. Pruitt spoke with a social worker from the Adoption Center of Choice who explained to Mr. Pruitt that Ms. Sadler had moved to Utah and planned to give the child up for adoption. Thereafter, Mr. Pruitt contacted several Utah attorneys. Mr. Pruitt even obtained advice from a Utah attorney prior to Ms. Sadler's relinquishment informing him of what he was required to do under Utah law. Consequently, this Court finds that Mr. Pruitt had actual knowledge of Ms. Sadler's relocation to Utah at least one month prior to the child's birth on November 12, 2002.

Finally, this Court finds that Mr. Pruitt's compliance with Alabama law is untimely. Section 78-30-4.15(4) specifically states that each requirement must be met "prior to finalization of the decree of adoption." Here, Mr. Pruitt made efforts to comply with the most stringent and complete requirements of Alabama law by acting in accordance with the relevant Alabama statute, Section 26-10c-1, which states in pertinent part:

> (i) Any person who claims to be the natural father of a child and fails to file his notice of intent to claim paternity pursuant to subsection (a) prior to or *within 30 days of the birth of a child* born out of wedlock, shall be deemed to have given an irrevocable implied consent in any adoption proceeding.

Ala. Code Ann. §26-10c-1(i) (emphasis added).

Mr. Pruitt filed a "Putative Father Intent to Claim Paternity Registration" form with the Alabama Department of Human Resources on December 12, 2002, exactly one month after the child's birth. Although Mr. Pruitt may have complied with this portion of Alabama law, his compliance was untimely because Ms. Sadler relinquished her rights and consented to the adoption on November 14, 2002.

I did!

Was not untimely, because 78-30-4.15(4) clearly states that I had to comply with ALA. statutes, in which I did. So it was done in timely manner, It doesn't matter that Lisa relinquished her rights on Nov. 14, because for the sake of 78-30-4.15, I had to comply within the time limit of ALA. statutes. (30 days after Birth)

Therefore, because Mr. Pruitt failed to comply with the requirements found in U.C.A. §78-30-4.15(4)(c) and (d), he is not entitled to protection under U.C.A. §78-30-4.15(4) and must be judged according to the standard outlined in U.C.A. §78-30-4.14.

**II. Because Mr. Pruitt failed to secure protection under U.C.A. §78-30-4.15(4), he is not excused from the strict compliance standard imposed upon Utah residents under U.C.A. §78-30-4.14.**

Mr. Pruitt must be held to the strict compliance standard outlined in Section 78-30-4.14 of the Utah Code, which states:

> (5) An unmarried biological father who does not *fully and strictly comply* with each of the conditions provided in this section, is deemed to have waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required.

Utah Code Ann. §78-30-4.14(5) (emphasis added).

Thus, Mr. Pruitt must have fully and strictly complied with the three-part test set forth in Section 78-30-4.14(2)(b) of the Utah Code, which provides:

> (2)(b) With regard to a child who is under six months of age at the time he is placed with adoptive parents, an unmarried biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this subsection *prior to the time the mother executes her consent for adoption or relinquishes the child to a licensed child-placing agency.*
> The father shall:
> (i) initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act on Paternity, and file with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;
> (ii) file notice of the commencement of paternity proceedings with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose, which notice is considered filed when the notice is entered in the registry of notices from unmarried biological fathers; and
> (iii) if he had actual knowledge of the pregnancy, paid a fair and reasonable

> amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

Utah Code Ann. §78-30-4.14(2)(b) (emphasis added).

The Court finds that Mr. Pruitt failed to comply with this three-part test as follows:

First, Mr. Pruitt did not initiate proceedings until May 23, 2003, six months after Ms. Sadler had relinquished her rights to the child, when he filed his verified Civil Complaint for Custody of Infant Child. Furthermore, according to Section 78-30-4.14(2)(b)(I), Mr. Pruitt should have initiated proceedings under 78-45a, the Uniform Act on Paternity. Mr. Pruitt, as the putative father, was required to file a petition or voluntary declaration executed in accordance with Section 78-45e. Section 78-45e-2(3) states, "The voluntary declaration of paternity may be completed and signed any time after the birth of the child. A voluntary declaration of paternity may not be executed or filed after consent to or relinquishment for adoption has been signed." Mr. Pruitt never filed a voluntary declaration of paternity in accordance with Section 78-45e and Ms. Sadler signed the relinquishment papers on November 14, 2002. Therefore, Mr. Pruitt missed his window of opportunity by failing to file a voluntary declaration of paternity or initiate proceedings prior to the relinquishment of the child for adoption.

Second, Mr. Pruitt never filed a notice with the State Registrar of vital statistics within the Department of Health and consequently, no notice has ever been entered in the registry of notices from unmarried fathers.

Third, Mr. Pruitt had no information regarding the actual costs of delivery, however, prior to the birth of the child, this Court finds that Mr. Pruitt had not paid a fair and reasonable amount of those expenses incurred in connection with Ms. Sadler's pregnancy.

This Court concludes that Mr. Pruitt did not strictly comply with the provisions contained in Section 78-30-4.14 by failing to initiate proceedings in a timely manner, file a notice with the State Registrar, or pay for pregnancy expenses and is therefore not entitled to object to any petition or release of the child for adoption.

**III. Mr. Pruitt's Rule 59(e) Motion is not timely and must be denied.**

Mr. Pruitt claims to make his Motion according to Utah Rules of Civil Procedure, Rule 59(e), which states:

> (e) *Motion to alter or amend a judgment.* A motion to alter or amend the judgment shall be served not later than 10 days after the entry of the judgment.

U.R.C.P., Rule 59(e).

The Rule states that it has to be served in (10) days, not filed.

This Court entered its judgment on August 27, 2003. Mr. Pruitt filed his Rule 59(e) Motion on September 19, 2003, well beyond the ten-day limit outlined in Rule 59(e). Mr. Pruitt's Motion was not timely and is therefore denied.

**III. Mr. Pruitt's Motion for Enlargement of Time to Respond and Motion for Order Under Rule 56 are moot.**

Mr. Pruitt alleges that this Court has "not ruled on, or even acknowledged, the Plaintiffs's Motions..." This Court was required to review the Defendants' Motion to Dismiss prior to reviewing Mr. Pruitt's Motion for Enlargement of Time to Respond and Motion for Order Under Rule 56. The Defendants' Notice to Submit for Decision on their Motion to Dismiss was filed on June 30, 2003. Mr. Pruitt's Notice to Submit for Decision on his various Motions was filed on July 28, 2003. This Court subsequently dismissed Mr. Pruitt's Complaint. This Court's Ruling dismissing Mr. Pruitt's Complaint makes his Motion for Enlargement of Time to Respond and Motion for Order Under Rule 56 moot.

I mailed motions on June 26 & Def. filed opposition memo.

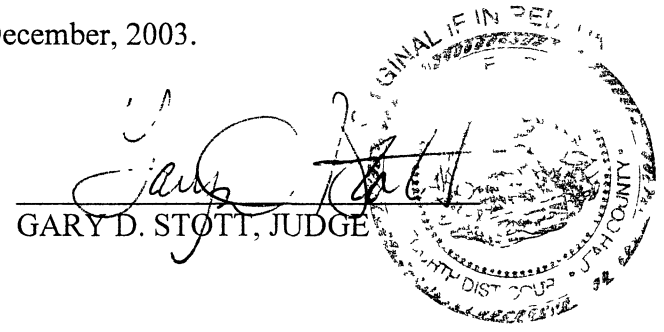
Rule 6(b) allows enlargement of time after expiration of time limit. In this case 3 days after limit to respond to mot. to dismiss. Is good is Rule 6(b) the judge applies motion?

## CONCLUSION

For the above reasons, this Court finds that Mr. Pruitt has not demonstrated full compliance with the provisions of U.C.A. §78-30-4.15(4) and is therefore required to strictly comply with the provisions of U.C.A. §78-30-4.14. This Court also finds that Mr. Pruitt failed to strictly comply with the provisions of U.C.A. §78-30-4.14 and is therefore not entitled to object to any petition or release of the child for adoption. Furthermore, this Court finds that Mr. Pruitt's Ruled 59(e) Motion was not timely. Therefore, this Court concludes that the August 27, 2003 Ruling is proper and Mr. Pruitt's Rule 59(e) Motion is denied.

Counsel for Defendants shall prepare an order consistent with this ruling and submit it to the Court for signature within twenty (20) days of the date of this ruling.

DATED this 17 day of December, 2003.



GARY D. STOTT, JUDGE

A 20

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 030402464 by the method and on the date specified.

| METHOD | NAME |
|---|---|
| Mail | BUDDY PRUITT<br>PLAINTIFF<br>28779 NICK DAVIS ROAD<br>-LIMESTONE CORR FAC<br>HARVEST, AL 35749 |
| Mail | LARRY S JENKINS<br>ATTORNEY DEF<br>60 EAST SOUTH TEMPLE,<br>SUITE 500<br>SALT LAKE CITY UT<br>84111-0000 |

Dated this 19 day of December, 2003.

Deputy Court Clerk